



Department of  
**Human Resources**

# POLICY

<b>Approved by:</b> Rebecca R. Hunter, Commissioner	<b>Policy Number:</b> 12-055 (Rev. 1/16)
<b>Signature:</b> <i>Rebecca R. Hunter</i>	<b>Supersedes:</b> 12-055
<b>Application:</b> All Executive Branch Employees	<b>Effective Date:</b> June 1, 2015
<b>Authority:</b> T.C.A. § 4-3-1703, T.C.A. § 8-30-104, T.C.A. § 8-30-105	<b>Rule:</b> Chapter 1120-14

**Subject:**

## Tennessee Employee Mediation Program

It is the policy of the State of Tennessee to encourage the use of mediation as a valuable tool for all state employees to resolve workplace issues. Mediation is a process whereby the parties themselves, with the assistance of a third party neutral, seek to develop and agree upon solutions to issues in the workplace. The primary purpose of the Tennessee Employee Mediation Program ("the Program") is to provide a responsive, informal, confidential, and effective means of resolving human resource issues as an alternative to administrative proceedings. Access to mediation services is available to any employee in the state service as a voluntary means of resolving workplace issues that are eligible for mediation as set out in the Rules of the Department of Human Resources Chapter 1120-14.

### Process and Procedure

- (1) To commence the mediation process, an employee submits a request to the Tennessee Employee Mediation Program Coordinator ("Program Coordinator") on the Request to Mediate form provided by the Department. The Request to Mediate may be submitted to the Coordinator by facsimile, email, or regular mail. The Request to Mediate is not confidential. The Program Coordinator will be responsible for confirming receipt of the Request to mediate in order to obtain consent to the mediation process. Upon receipt of the Request, the agency's human resource office and the individual whose consent is necessary for mediation will be notified. If consent to mediate is obtained from the individuals involved and the office of the Program Coordinator otherwise considers the request

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appropriate for mediation under the Rules of the Department of Human Resources, Rule 1120-14, the parties will be notified of such. If consent is not obtained or the Program Coordinator considers the matter inappropriate for mediation, the requesting party will be so notified. This approval process shall be completed within seven (7) calendar days of receipt of the Request to Mediate.

- (2) The Program Coordinator will make every effort to schedule the mediation within fourteen (14) days of completion of the approval process. The Program Coordinator will also make every effort to schedule the mediation at a time and place that is mutually convenient to the parties involved in the mediation. The Program Coordinator will be responsible for selecting and assigning approved Tennessee Employee Mediation Program mediator(s) to matters eligible for mediation within seven (7) calendar days of scheduling the mediation. There is a preference by the State, when possible, to assign co-mediators; however, the use of co-mediators is not required for a mediation to take place. The Program Coordinator will ensure that no mediators serve in any case involving a workplace issue in the same department or agency for which the mediator is currently employed, unless specifically requested by the parties.
- (3) Upon being assigned, the mediator(s) will receive a copy of the Request for Mediation and any attachments in order to prepare for mediation.
- (4) Upon convening the mediation, the parties shall execute an agreement to mediate which shall become part of the mediation file upon execution. Either party or the mediator may voluntarily withdraw from the mediation at any time, or at any stage in the process.
- (5) Any mediated settlement shall be approved by the parties' Appointing Authority or his/her designee and is binding on the parties. Copies of the agreement will be provided to both parties and to the Program Coordinator.

Questions regarding this policy may be directed to the Office of General Counsel.

## **Tennessee Employee Mediation Program**

### **AGREEMENT TO MEDIATE**

I certify that I have received, read, and understand the above policy regarding mediation. Furthermore, I acknowledge that my signature below signifies that I have voluntarily entered into mediation of a workplace issue under the Tennessee Employee Mediation Program and that I agree to the following terms:

1. The participants understand that mediation is a voluntary process and that they are entering into mediation in good faith and with a sincere desire to reach a mutually acceptable resolution of their dispute. The parties and representatives or attorneys of the parties are invited to attend the mediation. No one else may attend without the permission of the parties and the consent of the mediator. The parties acknowledge that open and honest communication is essential for mediation to be successful. All participants will be given an opportunity to speak and be heard and agree to treat each other with respect and courtesy. Either party may request a recess at any time to confer with legal counsel or representatives. As a voluntary process, either party may withdraw from mediation at any time. The participants understand that employees who participate in or opt out of mediation shall do so without interference, coercion, reprisal, discrimination, retaliation, or harassment.
2. The mediator is a neutral third party and will facilitate the parties' discussion in order to provide for better communication and understanding. The mediator is not a counselor or advocate for either party and does not give legal advice. The mediator will not make decisions for the parties, issue a ruling, or express an opinion as to who is right or who is wrong. The mediator may assist the parties in exploring potential solutions and in preparing a written agreement. The mediator may also determine that during the mediation, separate meetings with the parties may be necessary and appropriate. While serving as a mediator, the parties understand the mediator is not acting in a supervisory or managerial capacity for the State of Tennessee. The mediator may terminate the mediation at any time.
3. This mediation will be conducted in accordance with Rule 31 of the Tennessee Supreme Court. Mediation is intended to be a confidential process. To the extent permitted by law, the State of Tennessee will attempt to maintain the confidentiality of all documents related to the this mediation, and all participants agree that any verbal communication made during or in connection with this mediation will be held in confidence and not disclosed or otherwise utilized in any other proceeding. Audiotape, videotape, or other automated or electronic recordings of the mediation are not permitted. The requirement of confidentiality does not extend when a threat of bodily harm or injury is made; when communications express an intent to commit or conceal a crime; when communications reveal abuse of a child or elder abuse; or when disclosure is otherwise required by law. Any written mediated settlement agreement signed by the parties shall not, however, be confidential.
4. If an agreement is reached, it will be put into writing and be binding on the parties. Either party may have their representative or attorney who is present at the mediation independently review the agreement prior to signing.

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5. Participation in mediation will not affect any time periods for filing complaints or appeals under Tennessee law.
6. The participants agree not to subpoena the mediator or his/her records or notes pertaining to this mediation in any court or administrative proceedings, unless the proceeding concerns alleged misconduct by the mediator or enforcement of the mediated settlement agreement.

**ALL PARTICIPANTS (Including: Parties, Representatives, Attorneys, Mediators, Designees)  
SIGN BELOW:**

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**Tennessee Department of Human Resources**

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